

MISSOURI WELL INSTALLATION BOARD MEETING

August 8, 2008

**United Way Building
430-A Broadway
Cape Girardeau, MO 63701**

OPEN SESSION

The regular meeting of the Well Installation Board was held on August 8, 2008 at the United Way Building, 430-A Broadway Cape Girardeau, MO. A quorum being present, Mr. Robert Lawrence, Chairman, called the meeting to order at 10:15 a.m.

Board Members Present: Mr. Robert Lawrence, Chairman; Mr. Fred Schoen, Vice-Chairman; Ms. Martha Hildebrandt, Mr. Bob Broz, Mr. Danny Flynn, and Mr. Bill Duley. Ms. Harriet Beard joined via conference call.

Board Members Absent: Ms. Patricia Nichols, Ms. Annetta St. Clair.

Legal Counsel Present: Mr. Don Willoh, Assistant Attorney General.

MDNR/DEQ Staff Present: Mr. Steve Sturgess, Ms. Beth Marsala, Ms. Sheri Fry and Ms. Mary Catherine Price.

Guests Present: Mr. Jim Williams, Ms. Marilyn Williams, Mr. Lefty Evans, Ms. Sharon Evans.

INTRODUCTIONS

Mr. Lawrence welcomed everyone to the meeting and introduced himself. He asked the Board to introduce themselves, followed by introductions of staff and audience members.

MINUTES OF THE MAY 9, 2008 OPEN SESSION MEETING

Mr. Lawrence asked if there were any changes or corrections to the minutes from the May 9, 2008 meeting. Mr. Danny Flynn moved to accept the minutes. Ms. Harriet Beard seconded the motion. Motion carried.

RESULTS OF INTERNAL STUDY TO DETERMINE WHICH WHP SECTION WORK ITEMS ARE REQUIRED TO BE SEALED BY A REGISTERED GEOLOGIST

The Chair recognized Ms. Beth Marsala and Mr. Jim Williams.

Mr. Williams explained that the Geologist Registration Act requires geologists who interpret geologic data affecting public health, safety and welfare to be registered by the Missouri Board of Geologist Registration and to stamp or seal documents that they work on. He presented to the

Board some history as to why the Geologist Registration Act was enacted and the issues that have come before the Board of Geologist Registration.

Ms. Marsala described an internal study that the Wellhead Protection Section conducted in an effort to determine what documents need to be stamped or sealed by a registered geologist. The study used data on variances and other work items pulled from WIMS. Also, Ms. Marsala convened a workgroup that included several registered geologists from the Division of Geology and Land Survey as well as the Water Resources Center. The group determined that a lot of work currently being stamped or sealed by registered geologists involves issuing casing points and variances, with 90-95% of casing points given coming directly from the rule book with no field verification. Since actual geologic determinations or decisions are not being made, it was determined that these should not be sealed.

77% of the variances reviewed by the group were for setbacks that the section does not field verify. These did not require any geologic interpretation and hence did not require the work of a registered geologist. The committee decided that the only duties the section performs that requires a registered geologist are casing points for high yield wells, plugging specifications for Public Water Supply wells and drafting the geologically related portions of the Well Construction Rules. Jim Vandyke, of the Water Resources Center, indicated he may be willing to perform the high yield casing points and the plugging specifications for Public Water Supply wells if the section were to lose all of its registered geologists.

An immediate outcome of this effort has been a decision by the section to hire an environmental specialist rather than a geologist for the vacant unit chief position.

At this point, due to a limited use of the teleconference line, Ms. Beard had to sign off.

USE OF VARIANCES BY WHP SECTION

Ms. Marsala read parts of 10 CSR 23-1.040 which states there has to be a practical difficulty or unusual hardship to grant a variance; she mentioned that this language doesn't specifically state that variance can be issued as a space saving or cost saving measure. However, section staff are occasionally asked to grant variances in situations where space, cost or time can be saved without having any impact on groundwater. This sometimes happens in heat pump situations in which a contractor requests to replace a large array of shallow wells with a small number of deep wells. Ms. Marsala wanted to know if the Board has any direction to offer. The Board felt that a space saving measure or financial saving measure could be covered under this rule for heat pump wells, provided of course, that ground water is not threatened. This was decided based on the fact that full length thermal grout is required when issuing the variance and the fact that the fluids used in these wells are biodegradable food grade fluids.

USE OF LINER IN LIEU OF CASING IN SENSITIVE AREA 1-B AND 1-C

Ms. Marsala reported that it came to her attention in May that the section had been allowing drillers to put in liners in lieu of casing in Special Area 1-C (Greene & northern Christian Counties) and in Special Area 1-B around the lakes. This practice does not meet the minimum

construction standards under 10 CSR 23-3.100 (2) of the Missouri Well Construction Rules (MWCR) and will no longer be an acceptable well construction practice. A notice was sent to drillers in late May announcing the change in policy. The rules state that if a driller needs to use steel casing due to geologic conditions AND the static water level is expected to be high enough that it will interact with steel casing, then a minimum of 80 feet of steel casing in special area 1-B and 100 feet of steel casing in special area 1-C must be used in conjunction with a liner to the required casing point. In other words, if a driller absolutely has no choice but to use steel casing AND the static water level will interact with the steel casing, only then can a plastic liner be used to the required casing point. Both of these conditions must be present.

Mr. Jerry Bader sent a letter (which Ms. Marsala read aloud) to Board member Danny Flynn about this notice stating that he believed that this "new rule" was discriminatory in nature because it raises the cost of drilling wells too high. The Board discussed the letter and stated that they understood that this was not a new rule but just an action to enforce the rules that were in place. They also asked for comments from Mr. Lefty Evans, who was in attendance, because he drills wells in these areas. Mr. Evans stated that he believed that the rules should be changed to require a minimum of 150 feet of casing and that should take care of the problem. Then a liner could be used only if necessary. The Board said that this portion of the water well rules should be looked at when the rules are opened next. Mr. Flynn will respond to Mr. Bader's letter since it was addressed to him.

UPDATE ON LATE FEES FOR PUBLIC WATER SUPPLIES AND FEE RULE

During the May 8, 2008 Well Installation Board meeting, the Board asked Mr. Willoh several questions relating to the possible assessment of late fees on Public Water Systems that fail to submit records on well usage after new water lines are constructed in an area previously served by private drinking water wells. Mr. Willoh stated that he provided legal opinions to the Board in closed session and could not discuss it in open session other than to say he thinks the Board has the legal authority to charge late fees to public water systems if it chooses. The Board will make a decision on this item during the comment period on the rule, if a comment is received regarding this issue. They also noted that there are policy issues to take into consideration.

ENFORCEMENT ISSUES

Ms. Sheri Fry reported that in the last quarter the section issued one notice of violation for a construction problem and one notice of violation for operating without a permit. Staff were unable to reach a settlement with either of these companies. Therefore, both were referred to the AGO. Since then, one company has agreed to settle. There were also two companies issued construction violations in the last quarter. An agreement was reached with each company. The agreement was forwarded to the AGO for finalization.

FARM BUREAU SURVEY ON PROPOSED FEE INCREASE

For informational purposes, Mr. Sturgess brought to the Board's attention a one-question survey appearing in a Farm Bureau publication regarding DNR increasing maximums on the fees. He mentioned that the Board's chair, Mr. Bob Lawrence, had sent a letter to Ms. Leslie Holloway at

the Missouri Farm Bureau explaining why the Board was pursuing a possible increase in fees and the extensive stakeholder involvement process that it had followed prior to pursuing the possible rule change. It was determined that the Farm Bureau should be invited to stakeholder meetings and to the next Board meeting to help keep them informed.

MISSOURI WATER WELL ASSOCIATION COMMENTS

No comments.

OTHER BUSINESS

Ms. Sheri Fry reported there is a hearing scheduled for the fee rule on September 2, 2008. To meet filing deadlines, a special Board meeting is needed.

There is another public hearing scheduled for the apprentice rule on October 6, 2008. A special Board meeting is needed.

Ms. Martha Hildebrandt moved that the Board meet via conference call on Wednesday, September 10, 2008 at 9:00 a.m. and on Tuesday, October 14, 2008 at 9:00 a.m. for the purpose of responding to comments on the regulations. Mr. Fred Schoen seconded. Motion carried.

Ms. Marsala announced that DNR management has approved the request to begin a new rulemaking in order to update the monitoring well rules. The Board felt it was time to do this in order to keep up with current technology.

FUTURE MEETINGS

At the last regular meeting held in Rolla on May 9, 2008 the Board voted to hold the November meeting with open session to begin at 10:00 a.m. on November 7, 2008, in Rolla, Missouri.

Ms. Martha Hildebrandt moved that the February meeting of the Well Installation Board be held on February 23, 2009, at 10:00 a.m. in conjunction with the MWWA Convention at Resort at Port Arrowhead, Lake Ozark, Missouri. Mr. Fred Schoen seconded the motion. Motion carried.

ROLL CALL VOTE FOR NEXT CLOSED SESSION

Mr. Duley made a motion that the Well Installation Board meet in closed session at 9:30 a.m. at the next regular Board meeting, November 7, 2008, for the purpose of discussing matters protected from disclosure by law as provided for in Section 610.021, RSMo., including but not limited to: legal actions, pending litigation, and attorney-client privileged matters with the Board attorney. A roll call vote was taken as follows: Mr. Broz, yes; Mr. Duley, yes; Mr. Flynn, yes; Ms. Hildebrandt, yes; Mr. Schoen, yes. Motion carried.

ADJOURNMENT

Mr. Flynn moved that the meeting be adjourned. Mr. Schoen seconded. Motion carried.
Meeting adjourned at 12:05 p.m.